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Policy Alert

SUBJECT: Special Immigrant Juvenile Classification and Deferred Action

Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) to consider deferred action (and related employment authorization) for noncitizens classified as Special Immigrant Juveniles (SIJs) who are ineligible to apply for adjustment of status to lawful permanent resident (LPR) status solely due to visa unavailability.

Background

The SIJ classification is available to noncitizen children subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law.¹ SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization. A noncitizen classified as an SIJ, however, may seek to adjust status to that of an LPR based on the SIJ classification if the noncitizen meets certain requirements. One of the requirements is that an immigrant visa number be immediately available at the time of filing the adjustment application.²

Due to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years, leaving this especially vulnerable population in limbo. Therefore, USCIS is updating its policy guidance to provide that USCIS will consider granting deferred action on a case-by-case basis to noncitizens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visa numbers.

Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available, since for many years after implementation of the program, SIJs did have visas immediately available. Deferred action and related employment authorization will help to protect SIJs who cannot apply for adjustment of status solely because they are waiting for a visa number to become available. This process furthers congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States.³

¹ See [INA 101\(a\)\(27\)\(J\)](#). See [8 CFR 204.11](#).

² See [INA 245\(a\), \(h\)](#). See [8 CFR 245.2\(a\)\(2\)\(i\)\(A\)](#).

³ See [INA 101\(a\)\(27\)\(J\)](#).

This update, contained in Volume 6 of the Policy Manual, is effective May 6, 2022 and applies to eligible noncitizens classified as SIJs before, on, or after that date based on an approved Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)). This guidance is controlling and supersedes any prior guidance on the topic.

Policy Highlights

- Provides that USCIS automatically conduct deferred action determinations for noncitizens with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa number is not immediately available. Noncitizens with SIJ classification are not required to submit a separate request for deferred action, and a separate request will not be accepted.
- Explains that USCIS considers deferred action on a case-by-case basis to determine whether the noncitizen with SIJ classification warrants a favorable exercise of discretion.
- Provides that a grant of deferred action to a noncitizen with SIJ classification is for a period of 4 years.
- Explains that a noncitizen with SIJ classification who has been granted deferred action by USCIS may apply for, and be granted, employment authorization for the period of deferred action, by filing an Application for Employment Authorization ([Form I-765](#)), indicating category (c)(14).

Citation

Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 4, Adjudication [[6 USCIS-PM J.4](#)].

Additional Background

Noncitizens without lawful status who have an approved SIJ petition remain subject to removal and do not have the ability to obtain employment authorization until they can apply to adjust status, unless they are otherwise in a category that authorizes them to apply for employment authorization, including deferred action. SIJs who are granted deferred action would be eligible to apply for employment authorization under [8 CFR 274a.12\(c\)\(14\)](#).

Employment authorization will provide invaluable assistance to these vulnerable noncitizens who are children or young adults, and have limited financial support systems in the United States, especially as they age out of care, while they await an immigrant visa number.

In general, SIJs are unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility Congress established,⁴ as well as [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims](#), which states that absent exceptional circumstances, ICE

⁴ See [INA 245\(h\)\(2\)](#). See [8 CFR 245.1\(e\)\(3\)](#).

defers enforcement actions against SIJs until they adjust status to that of an LPR.⁵ Therefore, the granting of deferred action⁶ to SIJs further conserves DHS resources by focusing on the enforcement of higher priority cases, such as noncitizens who pose a threat to national security, public safety, and border security.

USCIS will not publish Federal Register notices requesting public comment because public notice is not required for internal policy clarifications. This policy update is based on our interpretation of the applicable terms in the Code of Federal Regulations and the Immigration and Nationality Act .

In addition to the above considerations, USCIS has analyzed this policy for any reliance interests that may have accrued to any regulated parties or the affected public. USCIS does not think there are any parties who will have taken actions or expended resources in reliance on USCIS not providing deferred action and employment authorization to noncitizens classified as SIJs who are ineligible to apply for adjustment of status to LPR. Approved SIJs already reside in the United States and are unlikely to be enforcement priorities.

Exercising our discretion to grant deferred action and possibly authorizing employment provides significant benefits to the U.S. labor pool and the economy in general compared to delaying such status. To the extent that this policy will result in any increased expenditures by any state for schools, services, or driver's licenses, USCIS anticipates such costs will be exceeded by the benefits to those states from the person being employed and contributing to the economy.

Conversely, USCIS believes that approved SIJ petitioners have a reliance interest in being provided with employment authorization consistent with the congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years before a visa is available. Accordingly, USCIS has decided that any reliance interest that an affected party may have for maintaining the status quo is outweighed by the need for and benefits of this policy change.

⁵ The directive states, "absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner (primary and derivative) until USCIS makes a final determination on the pending victim-based immigration benefit application(s) or petition(s), including adjustment of status for noncitizens with approved Special Immigrant Juvenile status." See [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims](#), Section 2.1.

⁶ As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.

This policy is effective on May 6, 2022 and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 6: Immigrants
[Part J – Special Immigrant Juveniles](#)

Chapter 4. Adjudication

A. Jurisdiction

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B. Expeditious Adjudication

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C. Interview

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D. Requests for Evidence

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E. Fraud

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F. Decision

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G. Deferred Action

1. Consideration for Deferred Action

A person granted SIJ classification may apply for adjustment of status to that of a lawful permanent resident if an immigrant visa number is immediately available in the employment-based 4th preference (EB-4) category, and the person is otherwise eligible for adjustment of status.¹⁸ There is an annual limit on the total number of immigrant visa numbers available in the EB-4 category¹⁹ and an annual limit to the number of applicants from a given country.²⁰ When an

¹⁸ See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

¹⁹ See [INA 203\(b\)\(4\)](#).

²⁰ See [INA 202\(a\)\(2\)](#).

immigrant visa number is not immediately available, a noncitizen with SIJ classification cannot apply for adjustment of status until new visas become available and the SIJ's priority date becomes current.²¹

USCIS considers deferred action for a noncitizen with SIJ classification if the person cannot apply for adjustment of status solely because an immigrant visa number is not immediately available. Deferred action is an act of prosecutorial discretion that defers proceedings to remove a noncitizen from the United States for a certain period of time.

Deferred action does not provide lawful status. Generally, persons granted deferred action are eligible for work authorization if they can demonstrate economic necessity for employment.²²

A separate request for deferred action is not required, nor will it be accepted, for noncitizens with SIJ classification who are ineligible to adjust status solely because an immigrant visa number is not immediately available. USCIS automatically conducts deferred action determinations for such persons.

2. Case-by-Case Discretionary Determination

As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.²³ In doing so, USCIS weighs all relevant positive and negative factors that apply to the person's case.²⁴ USCIS may generally grant deferred action if, based on the totality of the facts and circumstances of the case, the positive factors outweigh the negative factors.²⁵

One particularly strong positive factor that weighs heavily in favor of granting deferred action is that the person has an approved Form I-360 and will be eligible to apply for adjustment of status

²¹ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [[7 USCIS-PM A.3\(B\)\(4\)](#)].

²² See [8 CFR 274a.12\(c\)\(14\)](#).

²³ While separate biometrics submission is not required for consideration of deferred action, the officer may need to update the biographic background checks performed for the SIJ petition adjudication. Depending on the facts and circumstances of the individual case, the officer may also request that the person submit biometrics for a background check or interview the person before granting deferred action. See [8 CFR 103.2\(b\)\(9\)](#).

²⁴ See Volume 10, Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 4, Adjudication [[10 USCIS-PM A.4](#)].

²⁵ Noncitizens with approved SIJ classification awaiting visa availability to apply for adjustment of status are among the beneficiaries of victim-based immigration benefits who receive consideration for prosecutorial discretion regarding civil immigration enforcement actions. See [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims](#), issued August 10, 2021. USCIS may grant deferred action to noncitizens with approved SIJ classification who have never been in removal proceedings, as well as those in removal proceedings, those with a final order, or those with a voluntary departure order (as long as they are not in immigration detention).

as soon as an immigrant visa number becomes available. Additionally, the eligibility criteria for SIJ classification are generally strong positive factors in such a determination, including that a juvenile court determined that it was in the best interest of the SIJ not to be returned to the country of nationality or last habitual residence of the SIJ or the SIJ's parents.

A person who has been granted deferred action may apply for and be granted employment authorization for the period of deferred action.²⁶ The person must file an Application for Employment Authorization ([Form I-765](#)) indicating eligibility category (c)(14).

3. Period of Deferred Action

If USCIS grants deferred action to a noncitizen with SIJ classification in the exercise of discretion, USCIS authorizes deferred action for a period of 4 years. USCIS may consider requests for renewal of deferred action for noncitizens with SIJ classification who remain ineligible to apply for adjustment of status because an immigrant visa number is not immediately available. A person may submit a deferred action renewal request to USCIS 150 days before expiration of the period of deferred action. Renewal requests are subject to the guidance outlined above regarding eligibility and adjudication.

4. Termination

USCIS reserves the right to terminate the grant of deferred action and revoke the related employment authorization at any time as a matter of discretion. Examples may include, but are not limited to, cases where:

- USCIS determines the favorable exercise of discretion is no longer warranted;
- The Form I-360 petition for SIJ classification is revoked; or
- The prior deferred action and related employment authorization were granted in error.

²⁶ See [8 CFR 274a.12\(c\)\(14\)](#).